

IBLA 92-287 Decided June 2, 1994

Appeal from a decision of the Taos, New Mexico, Resource Area Office, Bureau of Land Management, declining to accept color-of-title application.

Affirmed in part, set aside and remanded in part.

1. Administrative Procedure: Hearings--Hearings--Rules of Practice:
 Appeals: Hearings--Rules of Practice: Hearings

Although the Board has discretionary authority to order a hearing before an Administrative Law Judge pursuant to 43 CFR 4.415, it normally orders a hearing only when an appellant presents a material issue of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through the ordinary appeal procedure. If no oral testimony is required and an appeal can be resolved relying on documentary submissions, a request for a hearing is properly denied.

2. Color or Claim of Title: Generally--Color or Claim of Title: Good Faith

A class 1 color-of-title applicant must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time he learned of the defect in his purported title to meet the good faith requirement of a class 1 color-of-title claim. An applicant who has held the land less than 20 years prior to filing his application must establish good faith possession under claim or color of title by his ancestors or grantors.

3. Color or Claim of Title: Adverse Possession--Color or Claim of Title:
 Description of Land

Occupancy and improvement of public lands without color of title create no vested rights against the United States, because no adverse possession of Government property can affect the title of the United States, except as provided by the Color of Title Act and similar statutes. An applicant's claim of apparent ownership must be based on a document which, on its face, purports

to convey title to the claimed land. The instrument of conveyance upon which an applicant relies is sufficient to provide color of title only if it describes the land conveyed with such certainty that the boundaries and identity of the land may be ascertained.

4. Color or Claim of Title: Good Faith

In determining whether a color-of-title applicant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to him. If an applicant or his predecessor-in-interest received a grazing allotment map that delineated the allotment so as to make it clear that the area described by his conveyance was public land, it would have imparted such notice as to make applicant's belief of ownership unreasonable and thus would preclude a finding of good faith.

APPEARANCES: Fred J. Waltz, Esq., Taos, New Mexico, for appellant; Gayle E. Manges, Esq., Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Felix F. Vigil has appealed from a December 17, 1991, letter from the Taos, New Mexico, Resource Area Office, Bureau of Land Management (BLM), declining to accept his color-of-title application and filing fee. The letter referred to a prior application submitted by Vigil on March 17, 1980, which stated that the land had never been cultivated, and that a field examination conducted in October 1983 revealed no improvements nor recent cultivation. In Felix F. Vigil, 84 IBLA 182 (1984), we affirmed BLM's rejection of appellant's earlier application, finding that appellant's grazing privileges for the land since 1970 indicate his knowledge of Federal ownership which negates the requisite good faith. We also found that appellant failed to submit evidence of improvements or cultivation.

In support of his new application, appellant has offered new evidence of improvements and cultivation, an abstract of title, a survey of the disputed land, affidavits of community residents, and documents from BLM files. As for the knowledge of Federal ownership imparted by appellant's grazing lease within the Cundiyo Community Allotment, appellant asserts that the area of summer grazing is approximately 2,400 acres and that the permit was not for his own 144-acre ranch which includes the disputed land. BLM asserts that appellant has unlawfully fenced 80 acres of the disputed land, preventing authorized grazing use by other members of the Cundiyo Community Allotment.

On the basis of our prior decision affirming the rejection of appellant's earlier application by appellant, BLM argued that the instant appeal

should be dismissed as "res judicata." By order dated June 8, 1992, we denied BLM's motion, pointing out that the new application includes land that was not part of the earlier application, and that Vigil alleges that he provided new evidence supporting his claim to the land that has been in his family for over 80 years.

[1] In his response to BLM's motion to dismiss his appeal, appellant requested a hearing with respect to issues addressed by his new evidence. In our order of June 8, 1992, we stressed the discretionary nature of such hearings and took appellant's request under advisement. The Board has authority to order a hearing before an Administrative Law Judge pursuant to 43 CFR 4.415. However, we normally order a hearing only when an appellant presents a material issue of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through the ordinary appeal procedure. Ben Cohen (On Judicial Remand), 103 IBLA 316, 321, aff'd sub nom., Sahni v. Watt, Civ. No. S-83-96-HDM (D. Nev. Jan. 17, 1990), aff'd (Jan. 14, 1991), aff'd No. 91-15398 (9th Cir. Apr. 27, 1992). If no oral testimony is required and an appeal can be resolved relying on documentary submissions, a request for a hearing is properly denied. See R. A. Mikelson, 26 IBLA 1 (1976). Upon review of the record in this case, we conclude the appeal can be resolved upon documentary submissions. Accordingly, appellant's request for hearing must be denied.

Appellant asserts ownership of patented lands along the Rio Medio or Canyon de la Joya in secs. 8 and 9, T. 20 N., R. 10 E., New Mexico Principal Meridian. These patents were issued to appellant's predecessors-in-interest as small holding claims pursuant to the Act of March 3, 1891, ch. 539, 26 Stat. 854, as amended by the Act of February 21, 1893, ch. 149, 27 Stat. 470, under which adverse bona fide possessors could obtain up to 160 acres of land. The patented lands total less than 20 acres, and appellant asserts that an additional 122 "disputed" acres have been used by him, his ancestors, and grantors since 1920. These 122 disputed acres are the object of appellant's color-of-title application.

The Color of Title Act, 43 U.S.C. § 1068 (1988), provides in pertinent part:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on the land or some part thereof has been reduced to cultivation * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre.

[2] A claimant must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time claimant learned of the defect in his purported title to meet the good faith requirement of a class 1 color-of-title claim. Because appellant had held the land

less than 20 years prior to filing his application, he must establish good faith possession under claim or color of title by his ancestors or grantors.

[3] Occupancy and improvement of public lands without color of title create no vested rights against the United States, because no adverse possession of Government property can affect the title of the United States, except as provided by the Color of Title Act and similar statutes. See United States v. Osterland, 505 F. Supp. 165, 169 (D. Colo. 1981); Delfino J. Borrego, 113 IBLA 209, 212 (1990). An applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land. Delfino J. Borrego, *supra*; John P. Montoya, 113 IBLA 8 (1990). The instrument of conveyance upon which an applicant relies is sufficient to provide color of title only if it describes the land conveyed with such certainty that the boundaries and identity of the land may be ascertained. James A. Kesel, 113 IBLA 380, 382 (1990); Charles M. Schwab, 55 IBLA 8, 11 (1981).

Although Vigil has submitted a survey of the parcel for which he is applying, he must establish some correspondence between his description of that parcel and the descriptions in the conveyances upon which his color of title is based. In his statement of reasons (SOR), appellant states that he "has basically two chains of title that merge into the ownership of his father, Leandro T. Vigil, and his mother, Higinia T. Vigil" (SOR at 3). The first chain starts with an October 9, 1909, conveyance of a 63-yard wide strip from Balentin Rael to Pedro Jaramillo y Ortega, followed by a 1920 conveyance of the same long strip to appellant's father, L. T. Vigil, who conveyed the land to appellant in 1970.

Appellant states that the remainder of the land was claimed by his grandfather, Felix Vigil. *Id.* However, the only instruments of conveyance submitted by appellant refer to the small holding claims and do not purport to convey the disputed land outside the boundaries of those claims. Thus, with respect to this portion of land, appellant's application must be rejected as a matter of law without regard to issues of good faith, cultivation, or improvements. See James A. Kesel, *supra*; Charles M. Schwab, *supra*. Accordingly, BLM's decision must be affirmed insofar as it rejects appellant's application with respect to land outside the 1909 conveyance.

We turn now to consider whether lack of good faith or improvements precludes approval of appellant's application with respect to the land described by the 1909 conveyance. Appellant asserts that there are fences in this area (SOR at 7) and his map shows this area to be crossed by an irrigation ditch which appellant claims as an improvement (SOR at 5). He also asserts cultivation near the ditch (SOR at 8). However, consideration of improvements would not be necessary if the land were not held in good faith for the 20-year period. Good faith is an essential element of a claim under the Color of Title Act, 43 U.S.C. § 1068 (1988), as well as under statutes allowing for patents of lands held under color of title in New Mexico, 43 U.S.C. §§ 177, 178 (1988). In Lawrence E. Willmorth, 64 IBLA

159, 160 (1988), aff'd, Willmorth v. Watt, No. C-82-518-JLQ (E.D. Wash. July 27, 1987), we offered the following explanation of the "good faith" requirement:

Good faith in adverse possession requires that a claimant honestly believe the land is owned by him. See 43 CFR 2540.0-5(b). In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to him. Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), rev'd on other grounds, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). A claimant must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time claimant learned of the defect in his purported title to meet the good faith requirement of a class 1 color-of-title claim. Claimant may tack on to his own possession a period when the land was possessed by his predecessors in title, but if this is done, their good faith must also be established. See Mable M. Farlow, 30 IBLA 320, 330 (1977).

In the above case, we concluded that the good faith requirement had not been met for a 20-year period because the evidence showed that the applicant's predecessor-in-interest became aware of the Government's title to the land at issue.

In the application that was the subject of his earlier appeal, appellant stated that he did not become aware that the land at issue was owned by the Federal Government until 1979. Nevertheless, we affirmed BLM's decision on the basis that the applicant had held grazing privileges on the land since 1970, prior to which they were held by his father. We held that possession of a Federal grazing lease constitutes acknowledgement of ownership of the land by the United States, citing Carmen N. Warren, 69 IBLA 347, 350 (1982), and Joe I. Sanchez, 32 IBLA 228, 232 (1977). Appellant, however, now claims that there was confusion about the grazing permit, and asserts that the area of summer grazing is approximately 2,400 acres and that the permit was not for his own 144-acre ranch which includes the disputed land. As we indicated in Willmorth, supra, BLM may consider whether such belief was unreasonable in the light of the facts then actually known to appellant or his predecessor-in-interest.

The case file compiled for appellant's first application contains a copy of a letter to him from BLM dated March 4, 1970, that notifies him of the transfer of grazing privileges from his father and refers to an "official allotment map." If that map delineated the allotment so as to make it clear that the area described by the 1909 conveyance was public land, it would have imparted such notice as to make appellant's confusion over the grazing permit unreasonable and thus would preclude a finding of good faith. If appellant's father had been provided such a map, appellant would be precluded from basing an application on the good faith of his predecessors. See Lawrence E. Willmorth, supra. Unfortunately, the map was not in the

record of the earlier appeal, and without it, we are unable to sustain the conclusion reached in our prior decision. Accordingly, the case must be remanded to BLM to clarify this matter with respect to the land described by the 1909 conveyance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellant's request for hearing is denied, the decision appealed is affirmed in part, and set aside and remanded in part for further action consistent with this opinion.

John H. Kelly
Administrative Judge

I concur:

David L. Hughes
Administrative Judge